

September 16, 2008



TRANSCRIPT
September 16, 2008

MONTGOMERY COUNTY COUNCIL

PRESENT

Councilmember Michael Knapp, President	Councilmember Phil Andrews, Vice-President
Councilmember Roger Berliner	Councilmember Marc Elrich
Councilmember Valerie Ervin	Councilmember Nancy Floreen
Councilmember George Leventhal	Councilmember Donald Praisner
Councilmember Duchy Trachtenberg	



September 16, 2008

1 Council President Knapp,

2 Good morning, everyone. Welcome to the County Council. Before we get started this
3 morning, I wanted to make one announcement that was in today's, this morning's paper.
4 Jim Gleason, who was Montgomery County's first County Executive, passed away. He
5 has, I did not have an opportunity to work with him, but all accounts are he was a
6 person who was very idealistic, but combative at times, in particular was a person who
7 stood firmly in what he believed in. One of the examples that was cited in the paper
8 today was when he withheld \$32 million in County payments on the Metrorail system to
9 make sure that the federal government was actually paying attention and that we would
10 actually get Metro extended to where we needed it in Montgomery County, something
11 that many of us can still appreciate today. He also helped launched the Ride-On system
12 for Montgomery County which was significant, as well as the County's Commission on
13 Human Rights, Women, and Consumer Affairs also began under his watch. Although,
14 from the Council, I think one of the things that he said that was most significant was, in
15 the later years, Mr. Gleason said he did not miss the hot seat of elected office, and the
16 best thing about the job of being County Executive he said was when the Council took
17 its annual vacation. Very interesting. But I just wanted to make sure as we do our
18 invocation this morning that we keep Mr. Gleason and his family in our thoughts and
19 prayers. With that, we will turn to Venkataramany Balakrishnan, Sri Siva Vishnu Temple
20 for our invocation. I know you are not well this morning, so if you want to stay seated,
21 but I would ask the rest of us to please rise.

22
23 Venkataramany Balakrishnan,

24 I am Venkataramany Balakrishnan, of the Sri Siva Vishnu Temple. Almighty God, you
25 are indeed one, but show yourself in many forms and assume many names. I stand
26 among the leaders of our beloved Montgomery County. Bless them all and grant unto
27 them the motivation and the capacity to serve all people in this County with justice and
28 compassion. I will now chant a prayer in Sanskrit. This has been chanted daily in Hindu
29 temples for thousands of years. The meaning is universal. An English translation
30 follows. Sanskrit is the language of the Hindus like Hebrew, Arabic, and Greek and
31 Latin. [Chanting in Sanskrit]. The English translation follows. Let us all be safe together.
32 Let us enjoy the good things of life together. Let us do noble deeds together. Let us
33 function together effectively and vigorously without any mutual jealousy and hatred. Let
34 there be peace, peace, and peace. We pray for the welfare and success of all who
35 govern wisely and well, justly protecting all people. Let all good people flourish and let
36 farms and animals also flourish. Let everyone everywhere live happily. Let there be
37 timely rains, let the land produce plenty of grains. Let this County be free from all
38 disturbances. Let good people move about freely. Let families live happily with children
39 and grandchildren. Let the poor become rich. Let all live happily for 100 years. Amen.
40 [Speaking in Sanskrit]. This is what we end every prayer with. Let everyone everywhere
41 in the world be happy. God bless Montgomery County, God bless the state of Maryland,
42 and God bless the United States of America. Thank you very much.

43
44 Council President Knapp,



September 16, 2008

1 Thank you very much. And thank you for joining us this morning. We now have two
2 Proclamations, the first of which is by myself in recognition of the 221st anniversary of
3 the U.S. Constitution. I would ask Donna Parker from the Goshen Mills Chapter of
4 Daughters of American Revolution to come join me. We do this each year in recognition
5 of our nation's Constitution. You know, as you go through the year, there are so many
6 different examples that present themselves that point out the flexibility in our
7 Constitution and why it works so effectively as we are now two weeks past, or a week
8 past September 11th and we look at how our nation responded, we look at the attack on
9 democracy and how democracy has withstood that, and in spite of all of the pluses and
10 minuses, puts and takes, it's still a heck of a lot better than anything else out there and
11 works much more effectively than anything else we have seen so far. And so it just, you
12 always continue to be astounded at that, and so we have a Proclamation recognizing
13 that tremendous document, and I want to present it to the Daughters of the American
14 Revolution this morning. It is a Proclamation whereas the Constitution of the United
15 States embodies the ideas and principals of our founding fathers supplemented by the
16 wisdom that has been reflected in our dynamic republic over two centuries. Whereas,
17 this fall marks the 221st anniversary of the framing of our Constitution by the 1787
18 Constitutional Convention. And whereas, the Constitution has not only embodied the
19 hopes and aspirations of Americans for liberty in representative government, by also
20 has inspired people seeking freedom the world over. Now therefore, be it resolved that
21 the Montgomery County Council recognizes the 221st anniversary of the United States
22 Constitution and urges constant vigilance of County residents in protecting their liberties
23 and rights for generations of Americans still to come. Signed on this 16th day of
24 September in the year 2008, under my signature as Council President. I thank the DAR
25 for making sure that we recognize this each and every year. And I wanted to see if you
26 have any remarks you'd like to make.

27
28 Donna Parker,

29 Yes. I just wanted to thank Montgomery County for celebrating Constitution Week with
30 the DAR. For those of you who don't know, DAR first asked congress for a resolution of
31 Constitution Week in 1955. The first Constitution Week was so successful that on
32 August 2nd, 1956, Dwight D. Eisenhower passed a law establishing Constitution Week,
33 it's Public Law number 915. Thank you.

34
35 Council President Knapp,

36 Thank you very much. [Laughter].

37
38 Donna Parker,

39 Oh, very good.

40
41 Neil Greenberger,

42 That looks pretty good.

43
44 Donna Parker,



September 16, 2008

1 Thank you.

2
3 Unidentified

4 Thank you. Appreciate that.

5
6 Council President Knapp,

7 And our second Proclamation this morning is handled by Councilmember Leventhal in
8 recognition of Prostate Cancer Awareness Month.

9
10 Councilmember Leventhal,

11 Okay. This one's for the men. This is Prostate Cancer Awareness Month, and we have
12 several health advocates here with us from hospitals here in the region and I believe
13 some representatives of the American Cancer Society. So let's have all of those who
14 are here to acknowledge Prostate Cancer Month and raise people's consciousness
15 about the need to be checked. Come on around in back of me. We're going to be,
16 you're going to be in a photograph and we're on television. So those who are watching
17 cable will be reminded in the next few minutes of the critical importance of having
18 prostate cancer exams. I'm going to read this Proclamation, whereas prostate cancer is
19 the second leading cause of cancer death among men in Maryland and over the past
20 decade has been the most commonly diagnosed cancer other than non-melanoma skin
21 cancer. And overall in Montgomery County, prostate cancer has the highest incidents
22 among all cancers. And whereas the American Cancer Society estimates that 196,320
23 new cases of prostate cancer will be diagnosed and 28,660 men will die from it in 2008
24 in the United States. In Maryland, it is expected that 3,420 men will develop prostate
25 cancer and 550 will die from it in 2008. And whereas most prostate cancers develop in
26 older men with more than 70% of all prostate cancer cases diagnosed in men older than
27 65, many prostate cancers are slow growing, do not produce symptoms, and may never
28 be life threatening, while other prostate cancers may progress and spread rapidly. And
29 whereas men who are African American, of African descent, and men who have a
30 brother or father with prostate cancer are at increased risk. And whereas Montgomery
31 County is pleased to join with the Department of Health and Human Services in
32 encouraging men to talk with their healthcare providers about getting screened for
33 prostate cancer and whether to have further testing and treatment. Therefore I, Ike
34 Leggett, County Executive, and Michael Knapp, Council President, hereby proclaim the
35 month of September 2008 Prostate Cancer Awareness Month in Montgomery County.
36 And we are now presenting this to two health advocates from Suburban Hospital, Judy
37 Macon and Pam Millbury and asking them to the microphone for any remarks that Judy
38 and Pam would like to make.

39
40 Judy Macon,

41 Thanks. I would like to, on behalf of all the hospitals in Montgomery County and the
42 Montgomery County Cancer Crusade, thank the Council for helping us to bring
43 awareness on prostate cancer, a very important cancer for men, and one that is very
44 treatable. And I also want to tell the Council and the audience here today that those of



September 16, 2008

1 us in Montgomery County, the hospitals and the Cancer Crusade, are committed to
2 promoting awareness and also providing free screening for the men of Montgomery
3 County. So thank you very much.

4
5 Councilmember Leventhal,
6 Thank you. [Applause]. Everyone around in back, group photograph. So come on,
7 group around. Let Neil see your smiling teeth. All right. [INAUDIBLE].

8
9 Neil Greenberger,
10 Take a bunch of these. [Laughter]. Super. Thank you.

11
12 Councilmember Leventhal,
13 Okay. Thank you.

14
15 Judy Macon,
16 Thank you very much.

17
18 Councilmember Leventhal,
19 Thank you very much. Thank you. Thanks for coming.

20
21 Council President Knapp,
22 Thank you, Mr. Leventhal. Also thank Jeff Zyontz of our staff who has provided us all
23 with a pocket copy of the Declaration of Independence and the Constitution of the
24 United States for us to keep at our desk or take with us. Thank you Jeff for doing that.
25 We now turn to General Business. Ms. Lauer.

26
27 Linda Lauer,
28 Good morning. We have received one Petition this week, and that was one opposing
29 Bill 25-08 the Emergency Medical Services Transport Fee. And we have a Calendar
30 change. The HHS meeting that was scheduled for 10:30 on Thursday is canceled. We
31 do have the joint Committee is still on though at 9:30. Thank you.

32
33 Council President Knapp,
34 Very good. Thank you. Madam Clerk, are there Minutes for Approval?

35
36 Council Clerk,
37 You have the Minutes of July 29th and the closed session Minutes of July 29th for
38 approval.

39
40 Council President Knapp,
41 Is there a motion?

42
43 Councilmember Leventhal,
44 So moved.



September 16, 2008

Councilmember Ervin,
Second.

Council President Knapp,
Moved by Councilmember Leventhal, seconded by Councilmember Ervin. Discussion on the minutes? Seeing none, all in support indicate by raising your hand. That is unanimous among those present. Thank you. We now turn to the Consent Calendar. Is there a motion for the Consent Calendar?

Councilmember Andrews,
So moved.

Council President Knapp,
Moved by Council Vice-President Andrews. Is there a second?

Councilmember Trachtenberg,
Second.

Council President Knapp,
Seconded by Councilmember Trachtenberg. Discussion on the Consent Calendar?
Councilmember Floreen.

Councilmember Floreen,
Yes, thank you very much. I had a question on 4A, the Resolution to approve the FY09 schedule of revenue estimates. Mr. Sherer, you know, things are changing in our economy as we speak. These numbers, our estimated revenue numbers are as of what day?

Chuck Sherer,
May 22nd.

Councilmember Floreen,
May 22nd. So my question is at what point will we receive any adjusted estimated revenues?

Chuck Sherer,
Well, possibly there might be some re-estimates next week.

Councilmember Floreen,
Next week?

Chuck Sherer,
I say possibly.



September 16, 2008

1
2 Councilmember Floreen,
3 Possibly.

4
5 Chuck Sherer,
6 But in the past, the Executive has done that, the Executive Branch has done that in
7 November.

8
9 Councilmember Floreen,
10 Right.

11
12 Chuck Sherer,
13 And that was in preparation for the fall SAG.

14
15 Councilmember Floreen,
16 Right, but given the.

17
18 Chuck Sherer,
19 They still intend to do that.

20
21 Councilmember Floreen,
22 Given the current fiscal uncertainty out there, it would be very helpful for us, and frankly
23 incumbent upon us, I think, to take a really close look at where the numbers appear to
24 be going.

25
26 Chuck Sherer,
27 Mr. Farber has been trying as hard as he possibly can to get revised estimates from the
28 Executive Branch.

29
30 Council President Knapp,
31 I would just comment on that. In working with the Chair of the MFP Committee, we have
32 actually moved our fiscal update to September 23rd for exactly that reason.

33
34 Councilmember Floreen,
35 Great.

36
37 Council President Knapp,
38 Which is about three or four weeks earlier than we would have gotten it and there have
39 been a number of communications, especially since the state revised its estimates,
40 which is unusual. So it has done an interim estimate, I think they did that a week and a
41 half ago. We have been working with the Executive Branch to see if we can get a similar
42 re-estimation done here, and I know they're working to try and see if they can have that
43 information for us for next Tuesday.



September 16, 2008

1 Councilmember Floreen,
2 I very much appreciate that attention to this issue. We certainly know based on the
3 reports that we received in the past week that the transportation revenues are down,
4 and how they translate into other impacts on our spending planning, we really need to
5 start focusing on the trickledown effect of some of the cuts we have heard about already
6 and others that may be coming shortly.

7
8 Council President Knapp,
9 Yes.

10
11 Councilmember Floreen,
12 Good, thank you.

13
14 Council President Knapp,
15 Okay. Councilmember Trachtenberg.

16
17 Councilmember Trachtenberg,
18 Thank you President Knapp. To add onto what was shared just now about the forecast,
19 the revenue numbers, it's my understanding that when we hear from the Executive
20 Branch both at the MFP worksession on Monday but also at the regularly scheduled
21 Council session on Tuesday, they are prepared to give us a few new numbers, not
22 across the board in every category, but they are able, they believe, to give us some new
23 updates.

24
25 Council President Knapp,
26 Okay. Further comments on the Consent Calendar? Councilmember Berliner.

27
28 Councilmember Berliner,
29 I would just observe 4E, the Resolution to increase modestly some fees for homebuilder
30 warranties. This is some fee that hadn't been raised since 2002, and I think that the
31 Executive is wise to look at all of these types of fees and make sure that we are
32 recovering the costs associated with the administration of these kinds of programs. So I
33 commend the administration for bringing this forward.

34
35 Council President Knapp,
36 Very good. Seeing no further discussion on the Consent Calendar, all in support please
37 indicate by raising your hand. That is unanimous. Thank you very much. We now turn to
38 District Council Session. We have one item, Action, Resolution to extend time until
39 November 23, 2008 for Council action on the Twinbrook Sector Plan. Unfortunately, due
40 to circumstances beyond our control, this has taken longer than any of us would have
41 liked it to, but I believe the current time limit expires the end of this month.

42
43 Unidentified
44 Yes.



September 16, 2008

1
2 Council President Knapp,
3 So it is, the Council, the PHED Committee is currently working on the Twinbrook Sector
4 Plan and it is our hope that we would have it concluded by the end of September so it
5 would be ready for full Council action sometime in the month of October. So we should,
6 this should give us plenty of time to get that done. Discussion? Do I need a motion? Is
7 there a motion for?

8
9 Councilmember Floreen,
10 So moved.

11
12 Council President Knapp,
13 Resolution. Okay. Second anyone? Seconded by Councilmember Ervin. Seeing no
14 discussion, all in support of the Action to extend the time for the Twinbrook Sector Plan
15 indicate by raising your hand. That is unanimous. Thank you. We now turn to Legislative
16 Session Day number 30, Approval of the Legislative Journal, Madam Clerk.

17
18 Council Clerk,
19 You have the Journal of July 29th for Approval.

20
21 Councilmember Trachtenberg,
22 So moved.

23
24 Council President Knapp,
25 Moved by Councilmember Trachtenberg. Seconded by Councilmember Leventhal. Is
26 there a discussion? Seeing none, all in support of the Journal for July 29th, please
27 indicate by raising your hand. That is also unanimous. Thank you. We have a Bill for
28 Introduction, Expedited Bill 30-08, Taxicabs - Licensing, sponsored by the Council
29 President at the request of the County Executive. Public hearing is scheduled for
30 October 7th at 1:30 P.M. And then we have Call of Bills for Final Reading, Expedited Bill
31 28-08. Spending Affordability - Operating Budget – Revisions. The MFP Committee
32 recommends approval. I will turn to the Chair of the MFP Committee, Councilmember
33 Trachtenberg.

34
35 Councilmember Trachtenberg,
36 Thank you, President Knapp. Well, in the two years that I have had the pleasure of
37 serving on this body, I have had four different configurations of the Management and
38 Fiscal Policy Committee, and each of those Committees has talked in a very robust
39 manner about how do we make the Spending Affordability process more relevant to
40 actually what happens with the budget. And so the Bill that is before you that comes
41 recommended from the Management and Fiscal Policy Committee very much is a fruit
42 of all of those Committees that have existed in the last two years and a lot of hard work
43 that was done by Council staff, and in particular, I want to acknowledge Chuck Sherer
44 who did a lot of work on this, and there's a table in the packet which was compiled by



September 16, 2008

1 Chuck that shows how the guidelines have related to the Operating Budget since
2 actually the Spending Affordability requirement took effect back in early 1991. The Bill
3 before you would revise the process for the Operating Budget again in relation to the
4 Spending Affordability item. It would require the Council to set the Spending Affordability
5 Guidelines for the budget in February rather than December. It would also repeal the
6 option to amend the guidelines in April. That is the one part of the Committee
7 recommendation that we didn't have a unanimous vote on. Councilmember Ervin
8 wanted to retain that option. Councilmember Praisner and myself wanted to go strictly
9 with the guideline as proposed in the Bill. The Bill would also add trends in personal
10 income to the factors that the Council should consider in adopting the guidelines, again,
11 this is a best practice that is utilized in other jurisdictions, Baltimore County is one
12 jurisdiction here in Maryland where that very much has been the case for some time.
13 The Bill would also require the County Executive to recommend prioritized expenditure
14 reductions for only County government and not the independent agencies. Again, we
15 were comfortable in making that recommendation because in the years of the current
16 Spending Affordability process, the County Executive has not made reductions,
17 information on those reductions, any recommendations available to County government.
18 That's something that has not been done. So we thought why have it in the law to begin
19 with if it's actually not something that is germane to really the process that influences
20 final decisions on the budget. So again, in a nutshell, that is the recommendation of the
21 Management and Fiscal Policy Committee, and I would ask my colleagues to support
22 the Bill as advanced by the Committee.

23
24 Council President Knapp,

25 Thank you very much. I want to thank the Committee for their efforts on this. Spending
26 Affordability has been a long and protracted discussion for many years.

27
28 Councilmember Trachtenberg,
29 Yes.

30
31 Council President Knapp,

32 And I appreciate the Committee delving into this and making the recommendations that
33 it has. Comments by Committee members? I don't see any. Councilmember Berliner.

34
35 Councilmember Berliner,

36 I want to commend the Committee Chair and the Committee for their efforts with respect
37 to this. I was among those that felt very strongly that the exercise we have gone through
38 in the past has been one that has enmeshed us in conversations that are unproductive
39 and irrelevant, and therefore let's change this. The only one that caught my attention,
40 the change that the Committee has proposed that I would appreciate having a little
41 more conversation about and your guidance on Madam Chair is the issue of repealing
42 the option to amend the guidelines in April. Flexibility is always something that I find
43 generally desirable in these kinds of situations, so I would appreciate your sharing with
44 us that particular piece.



September 16, 2008

Councilmember Trachtenberg,

Well, again, you know, it was my perspective that if we're going to go ahead and set the guideline, we set the guideline once. That, you know, I don't see the need to really leave that option open. I realize that for some folks, there's a belief that we have some final knowledge of what was getting done in terms of state budget numbers, and that for some people, and I think that was part of the rationalization that was shared by Councilmember Ervin, it would seem to me that, you know, setting it once makes it more germane to the final decision making and having repeated options to adjust what we have decided collectively is not necessarily an advantage. I mean, that's my rationalization for it. And Mike, I wondered, or Steve, if you wanted to elaborate a little bit on what we talked with our own staff here about the process and why setting that guideline only once was actually a better idea than, again, keeping to a schedule of multiple guideline dates.

Steve Farber,

I think, Ms. Trachtenberg, the position that you and Mr. Praisner took reflected the fact that you are already moving back until February from December the date on which you're setting the guideline. And that means that you're going to have the advantage of much more fiscal information, and you will also have the advantage of having seen the governor's budget. It is true that the General Assembly can reduce the governor's budget. But ordinarily, there's a high degree of similarity between what the General Assembly ends up with in April and what the governor has proposed in January. So I think that was one element of your thinking. And the second element of your thinking is that this is after all a Spending Affordability process. And what that implies is that you want to set a guideline, and you want to adhere to it, particularly with the advantage of much more information than you would have had in December. And moving the goalpost out does give you more flexibility, but it also is, I think, in the view of the Committee majority, somewhat inconsistent with a notion of setting a guideline that is directed to defining what is affordable from Council's perspective.

Councilmember Berliner,

If I could Council President, let me just stay with this because I really hadn't focused on it. Under our current scheme, which clearly needs to be amended, we go through this process in December, and everybody goes well, we don't have enough information. This is a shot in the dark. And in April, what flexibility do we have in April, remind me of the flexibility we have at that juncture if we decide that circumstances have changed in a manner that forces us to relook at this issue?

Steve Farber,

The flexibility you have really is pretty much unlimited. It used to be constrained. That was changed a number of years ago, and you can amend the guidelines in April as you choose. And what has happened as a practical matter is that in April, the Council has taken a look at the County Executive's budget as transmitted on March 15th and has



September 16, 2008

1 basically adjusted the guidelines to make them conform with what the County Executive
2 transmitted in March. I think the advantage of this new process starting with the
3 February date instead of a December date is that the Council, with a good deal more
4 information, is in a position to say this is what we, the legislature of Montgomery
5 County, feel is affordable. And it's a very timely reminder to the County Executive as he
6 is winding up the preparation of his budget or her budget as to what the Council feels is
7 affordable. I think it strengthens the Council's hand, which is appropriate because you
8 are the fiscal authority of the County. But with respect to the current April situation, you
9 do have unlimited flexibility. I don't think that flexibility has been used in any dramatic
10 way. It has been used rather to comport the Council's guidelines with what the
11 Executive happened to produce a month earlier.

12
13 Councilmember Berliner,

14 So under this new scheme, we wouldn't have that flexibility to comport and what I hear
15 you say is you believe it serves this body better not to comport, that he, the County
16 Executive, should comport with our guidelines as opposed to our comporting our
17 guidelines with the County's Executive's budget submittal. Is that the essence of the
18 conversation?

19
20 Steve Farber,

21 Yes. I mean, I think it is a very constructive improvement to have the Council make it
22 very clear in February when the Council possesses a good deal more information about
23 the governor's budget, about our own fiscal situation to say this is what we think is
24 affordable, and we want to make it very clear to the County Executive as he or she
25 produces the budget in March, this is what we think you ought to be taking into account.
26 And the Council can always, of course, override the guideline established in February
27 by, with seven votes. That is permissible now. And that, of course, would remain. But as
28 to whether you want to give yourself a second bite at the apple as it were in April, I
29 mean, that's really the nub of the question here. The Committee majority felt
30 comfortable with establishing a guideline in February with this additional information,
31 and then adhering to that with, of course, the possibility of overriding it in April with
32 seven votes, or rather in May with seven votes when the final budget action is taken.
33 That possibility would still exist.

34
35 Councilmember Berliner,

36 And if I could, just a last question. Other than the County Executive's budget submittal in
37 March, is there additional information as you observe, so we have the County
38 Executive's budget in March, and we have the governor's submission, what else takes
39 place, if you will, between when we would be acting in February and April that could
40 impact how realistic our Spending Affordability Guidelines are? Just the General
41 Assembly and the County Executive's budget are the two variables.

42
43 Steve Farber,

44 That's right.



September 16, 2008

1
2 Councilmember Berliner,
3 Essential variables. We don't get more information from the state revenue or the County
4 revenue projections, none of that is changed between February and April?

5
6 Councilmember Trachtenberg,
7 No.

8
9 Steve Farber,
10 No. I think that's correct. I think the major piece of information would be the final action
11 by the General Assembly and as I say, given the strength of the governor in the state's
12 budget process, there tends to be a pretty high degree of correlation between what the
13 governor recommended, certainly on the bottom line, and what the General Assembly
14 does.

15
16 Councilmember Berliner,
17 Thank you.

18
19 Councilmember Trachtenberg,
20 See what you're missing these days in MFP, Roger?

21
22 Council President Knapp,
23 Further discussion? The only question I had was on the first page of the packet, the
24 third bullet, require the County Executive to recommend prioritizing expenditure
25 reductions for only County government, not the independent agencies when a proposed
26 budget exceeds the applicable allocation. I just wanted to get some sense as to the
27 Committee discussion as to why to modify that current law or current practice.

28
29 Councilmember Trachtenberg,
30 Well, again, Council President Knapp, you know, in the Committee, we talked about the,
31 what had really been the practical experience and the fact that the reductions were not
32 being provided by independent agencies. And so we didn't see the need to leave the
33 language in the law that would make that possible just because it isn't an option that has
34 been routinely exercised. In a nutshell, that's again, what we really talked about.

35
36 Council President Knapp,
37 Okay. So the issue was just that the County Executive didn't make those
38 recommendations.

39
40 Councilmember Trachtenberg,
41 Right.

42
43 Council President Knapp,



September 16, 2008

1 And so rather than create an expectation that they would, we just figured we'd get rid of
2 it all together.

3
4 Councilmember Trachtenberg,
5 Exactly. We'd clean it up.

6
7 Council President Knapp,
8 Has there ever been a time when we actually got specific Executive recommendations
9 that were used for Council's deliberation?

10
11 Steve Farber,
12 I don't recall that there have been, Mr. Knapp. And what the County Executive typically
13 says is, as to the outside agencies, I support whatever they say they are going to do to
14 come down to the guideline for their agency. So we really have gotten nothing from the
15 County Executive with respect to that.

16
17 Council President Knapp,
18 Further discussion? Seeing none, I would ask the Clerk to call the roll.

19
20 Council Clerk,
21 Mr. Elrich.

22
23 Councilmember Elrich,
24 Yes.

25
26 Council Clerk,
27 Mr. Praisner.

28
29 Councilmember Praisner,
30 Yes.

31
32 Council Clerk,
33 Ms. Floreen.

34
35 Councilmember Floreen,
36 Yes.

37
38 Council Clerk,
39 Ms. Trachtenberg.

40
41 Councilmember Trachtenberg,
42 Yes.

43
44 Council Clerk,



September 16, 2008

1 Mr. Leventhal.

2
3 Councilmember Leventhal,
4 Yes.

5
6 Council Clerk,
7 Ms. Ervin.

8
9 Councilmember Ervin,
10 Yes.

11
12 Council Clerk,
13 Mr. Berliner.

14
15 Councilmember Berliner,
16 Yes.

17
18 Council Clerk,
19 Mr. Andrews.

20
21 Councilmember Andrews,
22 Yes.

23
24 Council Clerk,
25 Mr. Knapp.

26
27 Council President Knapp,
28 Yes. Expedited Bill 28-08 passes 9-0. Thank you very much and good work at the MFP
29 Committee and its Chair. Good work.

30
31 Councilmember Trachtenberg,
32 Thank you to my colleagues.

33
34 Council President Knapp,
35 We now turn to Bill 29-08, Human Services - Montgomery Cares - Advisory Board. HHS
36 Committee recommends approval. I will turn to the Chair of the HHS Committee,
37 Councilmember Leventhal.

38
39 Councilmember Leventhal,
40 Okay. The Health and Human Services Committee approved Bill 29-08 on July 10th.
41 The Montgomery Cares Advisory Board was originally created in 2006 to provide
42 oversight for the Montgomery Cares Program which seeks to provide access to
43 healthcare for poor and uninsured residents of Montgomery County. The Advisory
44 Board has been a great asset to the program, and the Committee's judgment was that



September 16, 2008

1 the sunset date on the original law establishing the Advisory Board ought to be
2 extended to 2015 rather than sunseting at the end of 2008. Bill 29-08, in addition to
3 extending the sunset date for the Montgomery Cares Advisory Board, also increases
4 the terms of members of the Board to three years, and we made some minor
5 adjustments to the directive on issues that the Advisory Board is to look at. We want to
6 make sure that among the objectives that it reviews is whether eligible individuals are
7 being assisted to participate in Medicaid and other forms of health insurance and some
8 other minor technical adjustments. The Committee unanimously approves the extension
9 of the sunset date for the Montgomery Cares Advisory Board and recommends it to the
10 full Council.

11
12 Council President Knapp,
13 Is there discussion? Seeing none. Thank you Mr. Leventhal. Mr. Faden.

14
15 Michael Faden,
16 There are a couple of fairly technical amendments that came in from DHHS that are on
17 the first page of our packet, that came in after the Committee first drafted this Bill. And
18 staff recommends them.

19
20 Councilmember Leventhal,
21 Did we not discuss these? We discussed the issue of adding the.

22
23 Michael Faden,
24 Right.

25
26 Councilmember Leventhal,
27 Making sure that individuals obtained state and federal healthcare coverage.

28
29 Michael Faden,
30 Right. They would modify that language slightly.

31
32 Councilmember Leventhal,
33 Oh, and they're add, in addition suitable non-County programs. I have no objection to
34 that language.

35
36 Councilmember Berliner,
37 Line 16 of the Bill, as I appreciate it, they are striking the word [inaudible].

38
39 Michael Faden,
40 Right.

41
42 Councilmember Berliner,
43 [Inaudible].



September 16, 2008

1 Michael Faden,
2 More broadly. Right.

3
4 Council President Knapp,
5 Is there concurrence, or there appears to be concurrence with the HHS Committee as
6 to.

7
8 Councilmember Leventhal,
9 I have no objection to the Department's suggestions. Okay.

10
11 Councilmember Trachtenberg,
12 I remember the conversation.

13
14 Council President Knapp,
15 Okay. Then with that, we have no objection to the amendments from the Department of
16 Health and Human Services. I see no further discussion. Madam Clerk, if you would call
17 the roll.

18
19 Council Clerk,
20 Mr. Elrich.

21
22 Councilmember Elrich,
23 Yes.

24
25 Council Clerk,
26 Mr. Praisner.

27
28 Councilmember Praisner,
29 Yes.

30
31 Council Clerk,
32 Ms. Floreen.

33
34 Councilmember Floreen,
35 Yes.

36
37 Council Clerk,
38 Ms. Trachtenberg.

39
40 Councilmember Trachtenberg,
41 Yes.

42
43 Council Clerk,
44 Mr. Leventhal.



September 16, 2008

1
2 Councilmember Leventhal,
3 Yes.
4
5 Council Clerk,
6 Ms. Ervin.
7
8 Councilmember Ervin,
9 Yes.
10
11 Council Clerk,
12 Mr. Berliner.
13
14 Councilmember Berliner,
15 Yes.
16
17 Council Clerk,
18 Mr. Andrews.
19
20 Councilmember Andrews,
21 Yes.
22
23 Council Clerk,
24 Mr. Knapp.
25
26 Council President Knapp,
27 Yes. Bill 29-08 passes 9-0. That action includes the Council's business for this morning.
28 We have a lunch meeting with the Montgomery County Planning Board beginning at
29 11:30 in the fifth floor conference room, and then we have public hearing at 1:30 where
30 we have nine speakers this afternoon. So, 11:30 downstairs for lunch with the Planning
31 Board, then 1:30 back here for public hearing. Thank you all very much.

September 16, 2008



TRANSCRIPT
September 16, 2008

MONTGOMERY COUNTY COUNCIL

PRESENT

Councilmember Michael Knapp, President	Councilmember Phil Andrews, Vice-President
Councilmember Roger Berliner	Councilmember Marc Elrich
Councilmember Valerie Ervin	Councilmember Nancy Floreen
Councilmember George Leventhal	Councilmember Donald Praisner
Councilmember Duchy Trachtenberg	



September 16, 2008

1 Council President Knapp,
2 Okay. Good afternoon, welcome back to the Council. We actually have one bit of
3 business we have to revisit from this morning. We are revisiting item B on our Consent
4 Agenda, which is Supplemental appropriation to the County Government's FY09
5 Operating Budget, Montgomery County Fire and Rescue Service - \$1,348,940 for Local
6 Fire and Rescue Departments, under the Senator Amoss Fire, Rescue and Ambulance
7 Fund Grant. Linda is going to tell us what we need to do differently.

8
9 Linda McMillan,
10 The total amount of funds was correct but within the allocations, two numbers got
11 flipped. The correct amount for the Germantown Volunteer Fire Department should be
12 \$71,250, and for the – Volunteer Fire Department, \$60,000 and if you would all
13 reapprove or correct the amendment then we could move forward.

14
15 Council President Knapp,
16 We need a motion to modify.

17
18 Linda McMillan,
19 Amend the Resolution.

20
21 Council President Knapp,
22 To amend the Resolution from this morning.

23
24 Linda McMillan,
25 Yes.

26
27 Councilmember Andrews,
28 Okay, I'll move to amend the Resolution as described.

29
30 Councilmember Floreen,
31 I will second it.

32
33 Council President Knapp,
34 Moved by Council Vice-President, seconded by Councilmember Floreen. All in support
35 of the amended Resolution indicate by raising your hand. Mr. Elrich. Thank you. That is
36 unanimous among those present, thank you. Okay. Now, we turn to our public hearings.
37 Good afternoon, ladies and gentlemen, this is a public hearing on a Limited Amendment
38 to the Wheaton Sector Plan which would rezone three properties located at the northern
39 edge of the Wheaton Central Business District Sector Plan. Persons wishing to submit
40 additional material for the Council's consideration should do so before the close of
41 business on September 23rd, 2008. The PHED Committee worksession is tentatively
42 scheduled for October 27, 2008, at 2:00 p.m. Please call (240) 777-7900 to confirm.
43 Before beginning your presentation, please state your name and address clearly for the
44 record and spell any unusual names. We have eight speakers for this hearing, a panel



September 16, 2008

1 of five and a panel of three. In our first panel we have Rob Klein speaking on behalf of
2 the County Executive, Fred Boyd speaking on behalf of the Montgomery County
3 Planning Board, Brett Schneider speaking on behalf of Wheaton Urban District Advisory
4 Committee, Matt Zaborsky speaking, representing the Mid-County Citizens Advisory
5 Board, and Karen Cordry representing the Wheaton Redevelopment Committee. Mr.
6 Klein is our first speaker.

7
8 Rob Klein,

9 Good afternoon. My name is Rob Klein. I'm Director for redevelopment in Wheaton and
10 I'm here to testify on behalf of the County Executive, Ike Leggett. I wish to, first of all,
11 the Limited Sector Plan Amendment is a smart growth mechanism to transition from the
12 more dense CBD development to the residential community north of what's the
13 development now happening at the Good Counsel site. The Sector Plan will also
14 provide for Urban District boundaries to be in coordination with what we provide in terms
15 of Urban District operations and will extend the tax base for the Urban District. But if we
16 were to keep this CO Zone it would not permit the kind of development that we seek
17 and what the market supports. Also, rezoning provides an opportunity for moderately
18 priced housing dwelling units and for workforce housing. We wish to thank Dr. Hanson
19 and the Planning Board and the County Council for their respective roles in this
20 innovative way of providing support for updating the Sector Plan, and an opportunity to
21 advance the revitalization of Wheaton. Thank you.

22
23 Council President Knapp,

24 Thank you very much. Mr. Boyd.

25
26 Fred Boyd,

27 Thank you. Good afternoon. I am Fred Boyd of the Montgomery County Planning
28 Department and I am representing the Montgomery County Planning Board.

29
30 Council President Knapp,

31 Fred, press your microphone.

32
33 Fred Boyd,

34 I'll start again. Good afternoon. I am Fred Boyd of the Montgomery County Planning
35 Department and I am representing the Montgomery County Planning Board. I am
36 pleased to provide this summary statement on the Limited Amendment to the Master
37 Plan for the Wheaton Central Business District and vicinity. This plan contains land use
38 and zoning recommendations for a portion of the Sector Plan area bounded roughly by
39 Georgia Avenue, Blue Ridge Avenue, Elkin Street, and the former site of Our Lady of
40 Good Counsel High School. It makes no recommendations for any other part of the
41 Wheaton Central Business District Sector Plan area. The Limited Amendment
42 recommends mixed use development in the CBD 1 Zone for four properties totaling
43 3.65 acres. It recommends mixed use development in the CBD 05 Zone for a single
44 property totaling 3.8 acres, and it recommends office uses in the CO Zone for one



September 16, 2008

1 property totaling 0.13 acres. The Limited Amendment evaluated the study area in
2 relation to the entire Central Business District and makes land use recommendations
3 that further the overall vision for the Central Business District, that it be a place for
4 people to live, work, shop, and be entertained. The 1990 Sector Plan first articulated
5 this vision and that vision is unlikely to change as the plan is reviewed comprehensively
6 and amended in the next year. The recommendations in the proposed Limited
7 Amendment help implement that larger vision. The Planning Board believes that mixed
8 use development in this portion of the Sector Plan area will add residential and
9 commercial uses that will increase the amount of housing available near Metro and
10 create an active, lively, and pedestrian oriented street with neighborhood shopping and
11 entertainment for Wheaton's residents and workers. The Planning Board looks forward
12 to working with the Council and its staff as this Amendment moves through the review
13 and approval process. Thank you.

14
15 Council President Knapp,
16 Thank you. Mr. Schneider?

17
18 Brett Schneider,
19 Good afternoon. My name is Brett Schneider. I am here representing the Wheaton
20 Urban District Advisory Committee of which I am the Chair. As the Chief Financial
21 Officer of Washington Professional Systems and -- Washington Music Sales Center,
22 Inc., as well as an accountant for multiple real estate properties in Wheaton, I represent
23 big business on the Wheaton Urban District Advisory Committee. The Wheaton Urban
24 District Advisory Committee fully supports the Limited Amendment to the Sector Plan
25 which enables a critical mixed-use project to proceed through the development process.
26 We greatly appreciate the start of the Sector Plan update which has recently started.
27 The current Wheaton Sector Plan dates to 1990 and since then, Wheaton has not
28 benefited from the recent updates as have other County urban centers. The Wheaton
29 Sector Plan needs a modest modification now rather than two years through it, though
30 even an accelerated Sector Plan update. The Wheaton Urban District Advisory
31 Committee thanks the County Council and the Planning Board, creating a means for
32 this project to move ahead. The Avalon Bay Project is good for Wheaton's future. I
33 thank you.

34
35 Council President Knapp,
36 Thank you very much. Mr. Zaborsky.

37
38 Matt Zaborsky,
39 Good afternoon. I am here representing the Mid-County Citizens Advisory Board in
40 support of the proposed Limited Amendment to the Wheaton Sector Plan. We believe
41 Wheaton is the principal urban center in the Mid-County region and we enthusiastically
42 support and look most forward to the revitalization of Wheaton. The support for this
43 revitalization extends to the Avalon Bay Project at the current BB&T site. We believe
44 this is a significant step toward building a commercially and socially vibrant Wheaton.



September 16, 2008

1 Avalon Bay will bring mixed use development within walking distance of the Wheaton
2 Metro Station. Additionally, we believe it will stimulate development immediately
3 adjacent to Metro, and in today's society with our ever-increasing gasoline prices and
4 the need to reduce traffic, excuse me, in any way possible, we further believe the closer
5 to Metro, the better. We would like to thank the Planning Board and its staff for their
6 creativity and very hard work permitting this project to proceed and thank you all for
7 your time.

8
9 Council President Knapp,
10 I thank you. Ms. Cordry.

11
12 Karen Cordry,
13 Thank you. My name is Karen Cordry. I am the acting Chair of the Wheaton
14 Redevelopment Advisory Committee. I live at 10705 Torrance Drive in Silver Spring,
15 that's only a few minutes away from the subway. I walk through the Wheaton Plaza
16 Westfield Shopping Town Mall every day on my way to the Metro and frequently shop at
17 the Safeway that is adjacent there too. I am, as I say, the acting Chair of the Committee.
18 I am also a member of the working group on the Sector Plan that is comprised of
19 representatives from both the Redevelopment Advisory Committee, the Urban District
20 Advisory Committee, and interested citizens from the neighborhood, and we have been
21 working on that even in advance of the formal start of the Sector Plan, and now we'll be
22 working with Sandy Talent on that as it goes forward. As part of the Wheaton
23 Redevelopment Advisory Committee I've been involved in looking at the Avalon Bay
24 Project which obviously was the impetus for this proposed amendment and would be
25 allowed at least to seek approval if this amendment passes. It's certainly something we
26 have been looking at for some time. We have made a number of suggestions to them
27 over that process for improvements. They were accepted with interest and with
28 willingness to work with us on it. We think the project that came out at the time was one
29 that was very useful. We think the additional design guidelines that have been
30 suggested by the Planning Board could even make further improvements to it and will
31 contribute to a project that would be a real benefit to Wheaton and a model for future
32 development. We are certainly not looking for huge development. We're not trying to
33 turn it into downtown Washington but we do believe there's plenty of room for additional
34 development that produces a balanced mix of office, residential, and retail development.
35 It will both provide better opportunities for the residents and visitors and additional
36 support for the businesses that are already there. You know, we certainly are not
37 against office space, and bringing that in, but we do believe that this project in the site
38 that it is at is actually a very useful project there. It provides the kind of transition that we
39 look for from the business area of town out to the residential areas and has the step
40 down both in size and in density and in type of use there. It is not going anywhere
41 obviously because of the problem with the way that the current zoning is structured,
42 which would limit it to trying to be an office building. To the extent that office space is
43 needed, I think we believe that the Safeway site which would be vacated by completion
44 of the Avalon Bay Project would in fact be a far more useful site. It would be directly



September 16, 2008

1 adjacent to the Metro. It also would then create a real block of land. We have that site,
2 there's the lot 13 site that has been part of the visioning process for Wheaton for some
3 time, as well as the available land over the bus space and that really produces a critical
4 mass of land in the downtown area that could be put together to make some real
5 projects as we hope the economy improves in the next year or two and at the end of the
6 sector zoning process we would be in a position to move forward with those. We do not
7 believe we need to wait though for the entire sector process to be completed in order to
8 move on this amendment. As part of the Sector Plan Working Group, we have certainly
9 been talking, as I said, for some months and putting together various goals and so forth
10 and although we certainly are nowhere at the end of that process, it's really just
11 beginning it. It is certainly clear that nothing we have discussed would be incompatible
12 with this kind of usage of the land, the mixed use proposals, the, in general, and the
13 type of development there, the residential transitioning, seem to be very compatible with
14 what we have been discussing. So we would support this amendment, thank you.

15
16 Council President Knapp,

17 Thank you very much. I don't see any questions for the panel but I commend you all
18 because that is one of the speediest panels of five speakers we have had in quite some
19 time. So thank you very much. That already predisposes us to a good outcome. For our
20 second panel, we have Harold Weinberg speaking as an individual, Jonathon Cox
21 representing Avalon Bay, and Max Bronstein representing the Strathmore Belpre Civic
22 Association. Mr. Weinberg is our first speaker.

23
24 Harold Weinberg,

25 Good afternoon. My name is Harold Weinberg, I'm a property owner for the adjacent
26 Avalon Bay Property. Well, here we are again. Before, this was about the Avalon Bay
27 Project. Now, it is many limited Wheaton Sector Plan Amendment for just 7 acres of
28 property. I oppose this process. Regardless of what you call it, you are planning a
29 radical rezoning from the existing Master Plan for one project owner. In the last two
30 years Avalon Bay tried to get approval for their project, first through a rezoning
31 application attempt and then through two Zoning Text Amendments, the last ZTA was to
32 eliminate the need to follow the Master Plan. Through those two processes two things
33 were made clear, this project was basically preapproved with no studies done for its
34 affect on the surroundings. During the first attempt the Planning Board Chairman and
35 others said they liked the project but couldn't approve it because the rezoning
36 application was contrary to the existing Master Plan. In the last attempt, ZTA 13, it was
37 again turned down after the public testimony showed the ZTA to be illegal spot zoning
38 to benefit Avalon Bay. Chairman Hanson's proposed solution to the PHED Committee
39 was to speed this project through by redrawing the Wheaton Central Business lines and
40 rezoning there. The second thing made clear was that this project could not be
41 approved because it was not permitted under the existing Master Plan because it was
42 and is a radical rezoning of a commercial use to high density residential and retail uses.
43 We recognize that this should be done in a comprehensive Master Plan revision, but
44 don't want to do it properly in the comprehensive Wheaton Sector Plan Amendment that



September 16, 2008

1 is now going on. Is it fair to have a radical rezoning from commercial to residential and
2 retail without studying the affect it could have on my property surrounded by three sides
3 by this project for compatibility, for the viability of our property in the future, for the affect
4 on roads, parking, other businesses, schools, and pedestrians? Why are these 7 acres
5 not included in the Sector Plan revision now under way? How can the larger Master
6 Plan process now underway be valid if you exclude just a few properties from
7 consideration in that process? Are you rushing this through for Avalon Bay because
8 Avalon Bay was and is under a bigger time constraint now because approval wasn't as
9 forthcoming as planned and they have economic and money issues now? Perhaps
10 Safeway is getting antsy to know what is going on and what is going to happen and the
11 current project is not feasible without a grocery store. I know the surrounding property
12 owners are entitled to the same rights, due process, and analysis afforded to the rest of
13 the residents and businesses in the 485 acre Sector Plan. In think everyone in Wheaton
14 affected by this illegal rezoning deserves this process. If I can't get due process from my
15 elected officials I will look to the court system and avail myself of the due process rights
16 afforded me there. Thank you for your time.

17
18 Council President Knapp,
19 Thank you very much. Mr. Cox.

20
21 Jonathon Cox,
22 Good afternoon ladies and gentlemen. My name is Jonathon Cox and I'm a Senior Vice-
23 President for Development with Avalon Bay Communities. We are the owners of
24 approximately 3.6 acres of land which is commonly referred to as the BB&T Property,
25 which is one of the three properties being affected by this Limited Site Plan
26 Amendment, Sector Plan Amendment. Avalon Bay is a multifamily real estate
27 investment trust headquartered here in Alexandria, Virginia. We build, manage, and
28 own our own properties for the long term. We own and manage approximately 183
29 communities that include over 52,000 apartment homes with approximately a million
30 square feet of retail and 12 markets across the country. We own eight communities
31 totaling more 2500 apartment homes in Montgomery County alone. Many of our
32 communities are transit oriented including local communities, Gallery Place which in
33 downtown DC and Avalon and Grovener Station at Tuckerman and Rockville Pike or
34 Wisconsin Avenue. Avalon Bay purchased the BB&T Property in May 2004. Our intent
35 was to redevelop this property into an approximate \$100 million transit oriented mixed
36 use project. Obviously the benefits of the Wheaton Metro Station were most
37 pronounced to us and the goals of the County to redevelop Wheaton, make that area
38 attractive to us to make that type of investment. We received significant support from
39 the Wheaton community and Park and Planning because of its consistency with current
40 County policy with regard, encouraging redevelopment of Wheaton. However, we
41 encountered challenges in trying to redevelop under what is essentially an outdated
42 Master Plan. I want to thank the Council for collaborating with Park and Planning and
43 utilizing this Limited Sector Plan, Limited Sector Plan Amendment process, which



September 16, 2008

1 enables this project to go through. It stands on its own merits and furthers the
2 redevelopment goals of Wheaton. Thank you very much.

3
4 Council President Knapp,
5 Thank you very much. Mr. Bronstein.

6
7 Max Bronstein,

8 Max Bronstein speaking on behalf of the Strathmore Belpre Civic Association. Currently
9 a comprehensive review and update of the 1990 Sector Plan is underway. Why then is
10 there this effort to leapfrog the more appropriate method for considering the matter? It
11 appears the driving force behind it is the developer, Avalon Bay Communities. In regard
12 to developers being driving forces when it comes to planning, that is a reverse
13 approach. The County should not be entertaining this type of development in this very
14 special and hurried manner. What is the rush? This proposal should be examined in the
15 context of the Master Plan process which is also the proper approach and procedure for
16 the Wheaton Sector Plan. In the face of the current national, state, and local economic
17 stress, our County's leaders should abstain from any excessive dependence on
18 anticipated revenue from the building and development sector, which I hope is not a
19 factor here. The key area affected by the proposed movement of the CBD boundary is a
20 two plus acre parking lot. So we regard this as a spot zoning effort. In regard to the
21 specific plan being considered for the parcel at Georgia and Blue Ridge, there has been
22 insufficient consideration of the various issues involved in this type of proposal. As we
23 consider the early Avalon Bay plan on this proposed development, we saw 320 dwelling
24 units plus 63,000 square feet of retail. How does the contemplated development affect
25 what will be its neighbors after the overall revised Sector Plan is finished? Also, how will
26 the neighboring areas affect the proposed area being considered here? We may be told
27 that the many facets of the public's health, safety, and welfare, that are taken up in
28 development review, are handled later in the process. Having some experience in that
29 process, I can't emphasize too strongly that those factors must be handled and provided
30 for from the very beginning in order to eliminate problems later. The saying, an ounce of
31 prevention is worth a pound of cure, is very appropriate here. There has been much
32 said about the value this proposed development would bring to the Wheaton Central
33 Business District. That is all well and good. It will be even more so if it is integrated into
34 the area after the Sector Plan's revision. The end does not justify the means. Beware of
35 setting a harmful precedent leading to multitudes of Limited Amendments. Avalon's
36 attorney, Mr. Klein, is quoted in the Gazette of May 21st saying that the plans will be the
37 same now as they would be after the Sector Plan's revision. If that is the case, I submit
38 that this proposal be denied, and considered after the comprehensive update and
39 revision of the Sector Plan has fully occurred. Thank you.

40
41 Council President Knapp,
42 Thank you very much. Councilmember Leventhal.

43
44 Councilmember Leventhal,



September 16, 2008

1 Mr. Weinberg, your testimony says that you and other surrounding property owners are
2 entitled to the same rights, due process, and analysis afforded to the residents and
3 businesses in this Limited Sector Plan. What do you want? What are you looking for?

4
5 Harold Weinberg,
6 I am looking for the proper process.

7
8 Councilmember Leventhal,
9 But I mean, you represent, you had some property, your testimony says you are with a
10 management company. Are there, do you have properties in the Wheaton commercial
11 area? And are you seeking something in particular for them?

12
13 Harold Weinberg,
14 I own a, I am part owner of a four story office building adjacent to the Avalon Bay
15 Property. My real estate company is in that building.

16
17 Councilmember Leventhal,
18 Uh huh. And you feel you're adversely effected if Avalon Bay proceeds?

19
20 Harold Weinberg,
21 I think I could be.

22
23 Councilmember Leventhal,
24 Okay. You want to tell us how?

25
26 Harold Weinberg,
27 Because it's, we don't know what the effects are going to be. Mr. Bronstein I think was
28 very eloquent about premature determination. I mean, I said, you don't know what the
29 effect is. To say whether it's a positive or negative effect, how do know if you don't study
30 it? Why is there a full Master Plan process? Is that, isn't that to study issues on cause
31 and effect of different properties and rezoning? Here you have a radical rezoning, no
32 one has said what could happen to a commercial office building that was surrounded by
33 office and now is going to be surrounded by residential and one grocery store.

34
35 Councilmember Leventhal,
36 Okay. For a lot of us, when we come to public hearing it's the first time, at least for me
37 anyway, where I've zeroed right in and I'm listening with great attentiveness to the
38 testimony. So, I'm just going to ask you again, this is your opportunity, what is your
39 concern? Do you fear an adverse effect?

40
41 Harold Weinberg,
42 I fear an adverse effect.

43
44 Councilmember Leventhal,



September 16, 2008

1 Yeah.

2

3 Harold Weinberg,
4 I fear that this is going to set back.

5

6 Councilmember Leventhal,
7 From what, what is the adverse affect that you fear?

8

9 Harold Weinberg,
10 That the development as planned could be detrimental to my property and my business,
11 it could be detrimental to Wheaton as a whole.

12

13 Councilmember Leventhal,
14 Detrimental in what way. Spell it out. I have got to vote on this. I'm trying to understand.

15

16 Harold Weinberg,
17 How do we know it is good planning, it's going to integrate with the rest of Wheaton and
18 my property? There has been no studies done. Why don't we just put a warehouse
19 there? Why don't we just level it and make it a park? They have decided to put
20 apartments and a grocery store. How do you know that's any good without studying it?

21

22 Councilmember Leventhal,
23 But, okay, I'm not, I don't want to debate you, I am just trying to understand what is it
24 that's causing you concern.

25

26 Harold Weinberg,
27 I am concerned that it's going to adversely affect my property specifically, there's other
28 neighbors, the apartments that are around there, the effect on the parking lot and I am
29 very upset that I am not being involved in the Master Plan process. It sets a bad
30 precedent for planning and Wheaton. Why do any Master Plan process if you can do it
31 all this way?

32

33 Councilmember Leventhal,
34 Okay. You are testifying here today before County Council.

35

36 Harold Weinberg,
37 I am testifying against this Limited Master Plan, yes.

38

39 Councilmember Leventhal,
40 Okay. Some might say that you are having an opportunity for input right here, right now,
41 and I am interested in your input.

42

43 Harold Weinberg,
44 I think I gave you my input. Maybe I don't understand your question.



September 16, 2008

1
2 Councilmember Leventhal,
3 Okay. I am very interested in your concerns as an adjacent property owner.

4
5 Harold Weinberg,
6 Okay.

7
8 Councilmember Leventhal,
9 And so I am trying to understand what is the adverse consequence that you feel of
10 moving forward with this Limited Sector Plan, which yes, it is true, would have as one of
11 its effects, the ability of the Avalon Bay proposal to proceed.

12
13 Harold Weinberg,
14 How can I completely answer that question without going through the Master Plan
15 process?

16
17 Councilmember Leventhal,
18 Okay. I just want to make an observation as much for my colleagues as for anyone else.
19 We have Mr. Schneider and we have Mr. Zaborsky and we have Ms. Cordry who are
20 neither developers nor developer's lawyers, they are citizens who of their own, in their
21 own free time and because of their interest in their community have volunteered to
22 serve on the various Committees that advise on Wheaton redevelopment. And then we
23 have Mr. Bronstein, who is an effective and frequent advocate for the Layhill Glenmont
24 area, he's been here to testify on many issues and we always appreciate hearing from
25 him. And boy, they could not be more different in their point of view, 180 degrees
26 different. It is just interesting.

27
28 Harold Weinberg,
29 I serve on WUDAC.

30
31 Councilmember Leventhal,
32 Yes sir. Okay. Thank you for pointing that out. This is the joy of this job, is trying to
33 reconcile, I mean, it would be easy if the citizens spoke with one voice, right, then we
34 would know. You know, we would all presumably like to do what our constituents want
35 us to do, but in this case, clearly whatever we do, we have to exercise our own
36 judgment and the citizens don't speak with one voice. I just hope in future, when we
37 refer to the citizens, as though it's so obvious what the citizens want, just remember this
38 Wheaton Sector Plan because it is not at all obvious and we have to discern the
39 different interests at stake and we have to discern what is our own best judgment here
40 because the citizens do not speak with one voice.

41
42 Council President Knapp,
43 Thank you. Councilmember Elrich. Actually, before we get to that part, I just wanted to,
44 this will come before the Planning, Housing, and Economic Development Committee I



September 16, 2008

1 believe it's on the 27th of October is when our worksession is tentatively scheduled for.
2 And so if there are concerns or further issues that people want to expound upon further,
3 make, you have time to get that to the Committee and we will take everyone's
4 perspective into account as we proceed and we deliberate over it before it comes back
5 to the full Council. So I just want people to understand that there is a process, this is a
6 part of it, the public hearing process, but that if there is additional information on either
7 side, or if there's yet another perspective that has not yet been heard from, by all
8 means, forward that information along and we will take that into account when it comes
9 before the Committee. Councilmember Elrich.

10
11 Councilmember Elrich,

12 I think, you know, some of what you point out is of value George, but I think that, I think
13 you are missing a little bit of what Max is saying. I don't think Max is saying whether this
14 is a good or a bad project and disagreeing with the three other citizens that you
15 mentioned in terms of evaluating whether it is a good or bad project. I think Max's
16 concern, Mr. Bronstein's concern, is over process and whether with an ongoing sector,
17 with an ongoing Master Plan, that you know, we basically jump out of the Master Plan
18 process to consider this. The other side of that is that, you know, I am sure, you know,
19 we've all had meetings about this project with various assorted people and the concern
20 in the Wheaton community is timing, that if they don't say yes to Avalon Bay, that the
21 project goes away and they wind up with something undesirable there or nothing at all,
22 no change at all, so they might lose a project which has benefit if they go along with any
23 process, for example, saying let's work this out in the Sector Plan, or the Master Plan. If
24 you go along with that process, you might lose the Avalon Bay Project. And I think
25 sometimes people make decisions to say I would rather take this now, even though it is
26 not the best process, rather than to lose this outcome over the process. And I think that,
27 you know, that is a little bit different issue about whether or not this project has merit or
28 not. I was interested in your line of questioning also for Mr. Weinberg, because I think
29 understanding how you're harmed is one of my concerns. You say your property is
30 surrounded on three sides?

31
32 Harold Weinberg,
33 Yes.

34
35 Councilmember Elrich,

36 Did anybody ask you if you could be part of this process? Did anybody ask you if you
37 wanted to be rezoned?

38
39 Marlene Michaelson,

40 I know the Planning Department staff is here but I believe your property was in the study
41 area, is that correct? So, this property was examined as well as the Avalon Bay
42 Properties.

43
44 Councilmember Elrich,



September 16, 2008

1 And were there any changes recommended for his property that is right next to Avalon
2 Bay, that is surrounded by Avalon Bay?

3
4 Unidentified
5 The Planning Board should answer that.

6
7 Councilmember Elrich,
8 Yeah.

9
10 Fred Boyd,
11 Fred Boyd, again, for the record. The Limited Amendment recommends that Mr.
12 Weinberg's property be retained in its existing zone, CO.

13
14 Councilmember Elrich,
15 I find, I mean, I am a little bit surprised at that, because if Avalon Bay surrounds it, and if
16 Avalon Bay is the brilliant idea about how you ought to integrate this fringe area and to
17 the step down into the other neighborhood, what is Park and Planning's logic for not
18 applying this to a surrounded property?

19
20 Council President Knapp,
21 I would actually, I mean, we can get into this, but we are actually going to get to do this
22 in a worksession on October 27th. This is just a public hearing.

23
24 Councilmember Elrich,
25 I'm just, I mean, this, George kind of got into the harm thing and I just wanted to
26 understand, I just want to understand this because I'm curious how you got exempted
27 from this.

28
29 Fred Boyd,
30 I can do this reasonably quickly. Mr. Weinberg's property is not totally surrounded by
31 this, by the Avalon Bay Project. Mr. Weinberg's property is on the corner of Blue Ridge
32 Avenue and Elkins Street. The Avalon Bay Property will be to the west and north of Mr.
33 Weinberg's property. In conversations with Mr. Weinberg, as the property was, as the
34 Master Plan process was proceeding, I put to Mr. Weinberg a question extremely similar
35 to Mr. Leventhal's question and took from our conversation that Mr. Weinberg desired
36 that to some extent the status quo be maintained for his property. Because of, and this
37 is the part we will get into in however much detail during the worksession.

38
39 Council President Knapp,
40 Yes.

41
42 Fred Boyd,
43 Because of a particularly detailed aspect of the Central Business District Zone, it
44 appeared to us, and we believe that the best way to preserve Mr. Weinberg's existing



September 16, 2008

1 building in its existing operation for the longest possible time was to leave the property
2 in the CO Zone.

3
4 Councilmember Elrich,
5 I'm just going to make an observation. One of the things you said bothers me a little bit,
6 because you said the owner desired. I didn't think Master Plans or Sector Plans were
7 supposed to be done based on what the owner desired. I thought that Park and
8 Planning was going in and making its best planning assumptions and planning guidance
9 in terms of the best use of the property for the area. So to say that one owner desires
10 this, does that mean you give what owners desire in a rezoning process or in a Master
11 Plan process? Or is there some broader -- I think we have got to adjust this issue about
12 whether you're doing this because owners desire it or because this is the best planning
13 outcome for the community?

14
15 Council President Knapp,
16 I'll give a brief response.

17
18 Fred Boyd,
19 No, no, no, I would.

20
21 Council President Knapp,
22 And then this will, obviously.

23
24 Fred Boyd,
25 Briefly.

26
27 Council President Knapp,
28 We'll have a lengthier conversation of this in the worksession.

29
30 Fred Boyd,
31 Briefly what I wanted to say is that this is too complicated to get into now, and we,
32 because this is part of the, sort of the philosophical underpinning that I used as the
33 project manager to approach how we dealt with this Limited Amendment. I will be happy
34 to sort of detail my thinking during the worksession.

35
36 Councilmember Elrich,
37 Okay. And was there a process in which you participated in? Was there a public, you
38 know, this was a mini Master Plan process. Was there an open public process in which
39 you had the opportunity to open and publicly participate?

40
41 Harold Weinberg,
42 I went to Park and Planning and testified like I am doing here. That was the extent of it.

43
44 Councilmember Elrich,



September 16, 2008

1 Yeah.

2
3 Harold Weinberg,

4 This plan is being spoken of as smart growth mixed use. I think it is an abomination to
5 call it mixed use. Mixed use is Rockville Town Center, Rustin Town Center, Rio. This is
6 320 apartments, one grocery store, and a 1200 square foot bank, that's just three
7 different uses. Mr. Klein talks about if we keep the CO Zone, we can't do our smart
8 growth, we are not changing a whole quadrant of Wheaton, we're changing 4 acres.
9 How do you know what effect that is going to have on our properties, surrounding
10 property, and what does that do to the process for everyone?

11
12 Council President Knapp,

13 Okay. Further questions for the witnesses? Councilmember Berliner.

14
15 Councilmember Berliner,

16 Mr. Bronstein, do you have a philosophical opposition to Limited Amendments?

17
18 Max Bronstein,

19 Yes.

20
21 Councilmember Berliner,

22 Thank you.

23
24 Council President Knapp,

25 Councilmember Leventhal.

26
27 Councilmember Leventhal,

28 Quick, very quick question for Mr. Weinberg. What is your property? What do you do?

29
30 Harold Weinberg,

31 My property is 5,000 square feet of land improved by a four story office building, we rent
32 out to about 19, 20 tenants, my real estate business is one of those offices. That's what
33 we do.

34
35 Councilmember Leventhal,

36 Office space?

37
38 Harold Weinberg,

39 Yes, sir.

40
41 Councilmember Leventhal,

42 Thank you.

43
44 Council President Knapp,



September 16, 2008

1 Okay. That concludes this panel. And it sounds like we will have a lively worksession on
2 October 27th. I urge people to attend. Agenda item number 10. Actually 10 and 11, this
3 is a public hearing on Zoning Text Amendment 08-16, and Subdivision Regulation
4 Amendment 08-04, Workforce Housing – Findings, which would amend the Zoning
5 Ordinance and Subdivision Regulations to modify the Development Plan, project plan
6 and subdivision findings required for Master or Sector Plan conformance to allow
7 Workforce Housing to exceed the density and building height recommended by a
8 Master Plan or Sector Plan. Included exhibits contain copy of Zoning Text Amendment
9 08-16 and Subdivision Regulation Amendment 08-04 as introduced, copies of
10 Resolutions establishing the public hearing date and time, proof of advertisement in the
11 Montgomery County Sentinel. Persons wishing to submit additional material for the
12 Council's consideration should do so before the close of business on September 30th,
13 2008. The Council has been informed that the County Executive intends to submit
14 written comments. A Planning, Housing, and Economic Development Committee
15 worksession is tentatively scheduled for November 3rd, 2008, at 2:00 p.m. Please call
16 (240) 777-7900 for information. Before beginning your presentation, please state your
17 name clearly for the record and spell any unusual names. Our first speaker is Greg
18 Russ speaking on behalf of the Montgomery County Planning Board.

19
20 Greg Russ,

21 Thank you Mr. President. For the record, again, Greg Russ from the Montgomery
22 County Planning Board. The Planning Board reviewed Zoning Text Amendment number
23 08-16 and Subdivision Regulation Amendment number 08-04 at its regular meeting on
24 September 11th, 2008. After careful review of the material of record, the Board voted
25 unanimously to recommend approval of the Zoning Text Amendment and the SRA with
26 revisions to conform the text to the text of the basic Workforce Housing Zoning Law.
27 The ZTA and SRA propose to restate the basic Workforce Housing Zoning Law that
28 allows any residential density or building height limit to be exceeded to the extent
29 necessary to accommodate Workforce Housing units. However, under the Amendments
30 as introduced, this is not the case. The text of the Amendments is confusing in that it
31 does not track the Workforce Housing regulations as currently codified. The Board
32 recommends that the ZTA and SRA be revised to more closely mirror the language and
33 format of the Workforce Housing Law as described in section 59A-6.18. I will be happy
34 to answer any questions you might have.

35
36 Council President Knapp,
37 Just one question.

38
39 Greg Russ,
40 Yes.

41
42 Council President Knapp,
43 So, you approved it, the Board approved it unanimously.



September 16, 2008

1 Greg Russ,
2 Yes. Yes.

3
4 Council President Knapp,
5 But, is.

6
7 Greg Russ,
8 Yeah. Basically.

9
10 Council President Knapp,
11 Like the intent but don't necessarily like the way it is said.

12
13 Greg Russ,
14 Yeah, and it's just a slight, it's just a slight change. I included the attached language to
15 deal with that.

16
17 Council President Knapp,
18 Okay. This concludes this panel, thank you very much. And our final speaker speaking
19 on behalf of the Montgomery County Civic Federation is Jim Humphrey. You probably
20 could have, I, no, this is just the way this was laid out.

21
22 Jim Humphrey,
23 I'm here testifying on all three items.

24
25 Council President Knapp,
26 Go ahead.

27
28 Jim Humphrey,
29 I will testify first on the Limited Amendment to the Wheaton Sector Plan. I am Jim
30 Humphrey, testifying on behalf of the Montgomery County Civic Federation as Chair of
31 their Planning and Land Use Committee. By unanimous vote of the August 20th
32 meeting, the Executive Committee members approved this testimony not to offer
33 comment on any specific proposed development project but to provide Councilmembers
34 with a list of issues which we believe are important when considering this or any future
35 Limited Amendment to an area Master Plan. We don't presume that you're not aware of
36 these items, this is in the nature of a reminder. There are assessments particular to
37 Limited Amendments to Master Plans. One positive aspect of using a Limited Master
38 Plan Amendment process may be a reduction in the number of Zoning Text
39 Amendments so that the integrity of zone category building standards can be retained,
40 properties can be rezoned into more appropriate categories rather than changing the
41 standards of the zone in place by ZTA. Another question to ask yourselves is, does the
42 requested amendment reflect best land use policies and is it needed to promote the
43 public health, safety, and welfare, or is it a request to facilitate a developer wanting to
44 build something on their property that is not currently allowed?. Would it be better



September 16, 2008

1 considered in the context of a comprehensive plan revision as we've heard Limited
2 Sector, I mean the Wheaton Sector Plan revision is currently underway? Weigh the cost
3 and times incurred by Planning and Council staff, by the Planning Board, by the County
4 Council, and the public when deciding whether or not to consider a Limited Plan
5 Amendment. And then there are those assessments that are similar to those you will
6 make for a comprehensive Master Plan revision to assess the infrastructure needed to
7 accommodate any increase in allowed density, check the transportation capacity using
8 Policy Area Mobility Review, the Local Area Transportation Review, CLV analysis for
9 the closest intersections, and the latest highway mobility report to check for failing
10 intersections in the area. And check area school capacity as well as availability of parks,
11 recreation facilities, and public safety services. Consider not only the impact from the
12 density increase on the infrastructure in the effected planning area but on the
13 infrastructure in adjacent planning areas, as well as the impact from adjacent planning
14 areas on the area under consideration. You will need to consider the impact on
15 businesses, especially small businesses owned by County residents, consider the
16 bonus density that could be allowed, remember 22% moderately priced dwelling unit
17 programmed density, and a 9% Workforce Housing density is available in applicable
18 areas. That totals 31% added density, it should read on Metro Station policy properties
19 with 40 dwelling unit per acre density or greater. The Civic Federation has
20 recommended engaging in a Countywide build-out analysis. I thought I had five
21 minutes.

22
23 Council President Knapp,
24 You do. Keep going.

25
26 Jim Humphrey,
27 At present, 40 million square feet of new commercial space could be built under existing
28 zoning as well as 75 to 85,000 additional dwelling units, enough to accommodate
29 195,000 to 210,000 additional population. And also consider establishing a procedure,
30 very important, for keeping Master Plans up to date, not only the online versions but the
31 hard copies sold at Park and Planning headquarters so they reflect all the changes that
32 are made in approved ZTAs or Limited Amendments, which ties into our early point
33 about the amount of staff time required. Very quickly, on the ZTA and SRA regarding
34 Workforce Housing, we would ask that the words, Section 59A6.18 and be added prior
35 to Chapter 25B, any time that appears, and I've noted the lines in the ZTA and the SRA
36 in which they appear, use of the phrase, "Workforce Housing as required by Sector
37 59A6.18 and Chapter 25B" is consistent with the authorizing legislation that was
38 approved in 2006.

39
40 Council President Knapp,
41 Thank you very much.

42
43 Jim Humphrey,

September 16, 2008